

LAWS2204 PROPERTY STUDY NOTES

INTRODUCTION

- Property can be defined in three dimensions. The analytical dimension refers to the basic characteristics of property rights that distinguish property rights from other rights. The justificatory dimension refers to a moral philosophy that justifies the recognition of property rights. The doctrinal dimension is the strict legal view of the rules of property law.
- English Judge William Blackstone stated in his book Commentaries on the Law of England that *'property is the sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe'*.
- The tort of nuisance overlaps with property, in that it restricts a landowner's ability to do whatever they want on their land.
- Property rights are relative, not absolute. Owners can exclude a large amount of people from their land, but not all people.
- In Yanner v Eaton (1999), Yanner was an Indigenous person from North Queensland who used traditional hunting techniques and caught two juvenile crocodiles. This was prohibited under s54 Fauna Conservation Act 1974, which referred to all fauna as the property of the Fauna Authority which could not be captured without permission. However, Yanner successfully argued that s211 Native Title Act states that laws which require a permit for an activity do not apply in respect of the exercise of native title rights. The Fauna Authority's property rights were extinguished in this case.
- Property rights are the aggregate of other rights that individuals hold against other individuals. British Jurist Tony Honoré stated that these rights include the right to possess, right to use, right to manage, right to the income, right to the capital, right to security, and the right to enjoy the thing indefinitely, among others.
- In King v David Allen & Sons (1916), the licensor had an agreement with the defendant which allowed the defendant to place posters on the licensor's property. The licensor then leased the property to King, who refused to uphold the agreement. Held that a licence was not a property right, as there was an insufficient degree of control. Only proprietary rights are enforceable against third parties. Interests are not proprietary simply because they are enforceable against a third party.
- In Doodeward v Spence (1908), the appellant purchased a stillborn 2-headed baby fetus 40 years after it had been preserved by another doctor. The police confiscated the bottle, and the appellant brought an action in detinue – a property tort. Held that taking the object was lawful, but keeping the object was unlawful. Appellant won.
- In Moore v Regents of the University of California (1990), Moore was treated for leukaemia at the University of California, the Doctor removed his spleen and Moore signed consent forms. Doctor then performed research on the spleen cells, which eventually generated significant revenue, and Doctor later applied for a patent. Court ruled that Moore had no right to discarded blood and tissue samples. However, Moore would have had recourse for a breach of fiduciary duties against his doctor, as Moore was not fully informed about the use of his spleen for medical research.

POSSESSION AND PERSONAL PROPERTY

- Personal property refers to tangible things other than land. Also known as chattels. Intangible property can also be protected.
- Traditionally, the remedy for disputes concerning real property was an order for possession, which would eject the trespasser from the premises.
- Personal property lacks a common law means for direct enforcement, as possession orders are largely unavailable. Rights are enforced indirectly through the law of torts, and damages are the most common remedy.
- Personal property rights can also be indirectly enforced through claims for trespass to goods, conversion, and detinue.
- Trespass to goods occurs where the defendant wrongfully interferes with the plaintiff's lawful possession. Damages are the most common remedy, and Courts will not order the return of the good. This dispute is actionable regardless of actual monetary loss, unlike the tort of negligence.